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# GENERAL STATUTES OF MINNESOTA

## SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES  
AND OTHER LAWS OF A GENERAL AND PERMANENT  
NATURE, ENACTED BY THE LEGISLATURE  
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

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WEST PUBLISHING CO.

1918

PART III

CIVIL ACTIONS AND PROCEEDINGS

CHAPTER 74

PROBATE COURTS

GENERAL PROVISIONS

7200. Establishment, sessions, etc.—

Collateral attack on proceedings (122-1, 141+851). Executors and Administrators, ⌘ 29(2).

The probate court is a court of superior jurisdiction, and the same presumptions attend its acts as in the case of superior courts of common law (124-492, 145+378). Courts, ⌘ 202(5).

PROBATE COURTS GENERALLY

7204. Court first acquiring jurisdiction has exclusive jurisdiction—

Where the probate court of the county of a decedent's domicile has first acquired jurisdiction over the estate, the probate court of a county wherein decedent had a temporary abode at the time of his death is not thereafter entitled to take jurisdiction (130-269, 153+520). Courts, ⌘ 475(2, 3).

7205. Counties in which administration shall be had—

130-269, 153+520; note under § 7204, ante.

A probate court in this state has jurisdiction to appoint a special administrator to maintain an action for the wrongful death in this state of a nonresident (129-279, 152+413).

7211. Incidental powers—

Scope and extent of jurisdiction of probate court (see 133-124, 158+234). Courts, ⌘ 200¼.

7215. [Superseded.]

See § [7215-]1.

[7215-]1. Salaries of judges and clerk hire in counties having less than 100,000 inhabitants—The probate judges in all the counties in this state where compensation is not fixed by special laws shall receive in full compensation for all services rendered by them annual salaries to be paid in twelve equal monthly installments, based on the then last preceding completed state or national census, and on the then last preceding assessed valuation of real and personal property, as fixed by the Minnesota state tax commission as follows:

In counties whose population is less than six thousand, seven hundred fifty dollars; if the population is six thousand and less than nine thousand, one thousand dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed three hundred dollars; if the population is nine thousand and less than thirteen thousand eleven hundred fifty dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed four hundred dollars; if the population is thirteen thousand and less than seventeen thousand, thirteen hundred dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed five hundred dollars; if the population is seventeen thousand, and less than twenty-two thousand, fourteen hundred fifty dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed six hundred dollars; if the population is twenty-two thousand and less than twenty-eight thousand, fifteen hun-

dred dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed seven hundred fifty dollars; if the population is twenty-eight thousand and less than thirty-six thousand, sixteen hundred dollars, and in addition thereto fifty dollars for every million dollars assessed valuation not to exceed nine hundred fifty dollars; if the population is thirty-six thousand and less than forty-five thousand, eighteen hundred dollars, and in addition thereto fifty dollars for every one million dollars assessed valuation not to exceed one thousand dollars; if the population is forty-five thousand and less than one hundred thousand, three thousand dollars.

In addition to the foregoing salaries, annual compensation for clerk hire for probate judges in counties having a population of less than one hundred thousand shall be as follows:

In all counties having a population of less than eight thousand the county board may allow clerk hire in an amount not to exceed one-fourth of the salary of the probate judge; if the population is eight thousand and less than thirteen thousand, three hundred dollars, and such further sum as the county board may allow not to exceed a total of seven hundred dollars; if the population is thirteen thousand and less than seventeen thousand, four hundred dollars and such further sum as the county board may allow not to exceed a total of eight hundred dollars; if the population is seventeen thousand and less than twenty-two thousand, five hundred fifty dollars, and such further sum as the county board may allow not to exceed a total of nine hundred dollars; if the population is twenty-two thousand and less than twenty-eight thousand, six hundred fifty dollars, and such further sum as the county board may allow not to exceed a total of twelve hundred dollars; if the population is twenty-eight thousand and less than thirty-six thousand, seven hundred dollars, and such further sum as the county board may allow not to exceed a total of fourteen hundred dollars; if the population is thirty-six thousand and less than forty-five thousand, twelve hundred dollars and such further sum as the county board may allow not to exceed a total of fifteen hundred dollars; if the population is forty-five thousand and less than one hundred thousand, fifteen hundred dollars, and such further sum as the county board may allow not to exceed a total of two thousand dollars. Provided, however, that no sums whatever shall be paid or allowed for clerk hire in excess of the amounts actually paid or due for help employed to perform necessary excess clerical labor in the respective offices of judges of probate as hereinbefore mentioned. ('17 c. 328 § 1)

By § 3 the act takes effect January 1, 1919.

[7215—]2. **Same—Laws repealed, etc.**—This act shall not affect or repeal chapter 63 of General Laws, 1915 [7220—3 to 7220—6]. All other acts and parts of acts inconsistent with this act are hereby repealed. ('17 c. 328 § 2)

[7220—]1. **Salary of clerk and employees in counties having 220,000 and not more than 325,000 inhabitants**—That the salary of the clerk and employees of probate courts in all counties of this state having according to the then last completed state or national census the population of not less than 220,000 inhabitants and not more than 325,000 inhabitants is hereby fixed as follows: The clerk of probate at the sum of twenty-seven hundred and fifty dollars (\$2,750.00) per annum, a deputy clerk at the sum of eighteen hundred dollars (\$1,800.00) per annum, one court reporter who shall also act as secretary to the judge of probate in all matters pertaining to his official duties who shall be paid the sum of fifteen hundred dollars (\$1,500.00) per annum, an inheritance tax clerk at the sum of fifteen hundred dollars (\$1,500.00) per annum, a registration clerk at the sum of fifteen hundred dollars (\$1,500.00) per annum, a file clerk at the sum of twelve hundred dollars (\$1,200.00) per annum, three general clerks one of whom shall be paid twelve hundred dollars (\$1,200.00) per annum each and two at the sum of one thousand dollars (\$1,000.00) per annum each; all of said salaries shall be paid in equal monthly installments out of the county treasury of such counties upon the warrants of the county auditor. ('17 c. 434 § 1)

1917 c. 434 is entitled "An act to amend chapter 142, Laws 1915," etc., although it does not expressly amend the same. Section 3 repeals inconsistent acts, etc.

[7220—]2. **Same—To what counties applicable**—Whenever according to the then last state or national census the population of any county of this state which now has a population of less than 220,000 inhabitants, shall acquire not less than that number, such county shall at once become subject to the provisions of this act, and whenever, according to such census the population of any county shall exceed 325,000 inhabitants or fall under 220,000 inhabitants, the provisions of this act at the expiration of thirty days from the final filing of the enumeration of such county shall not longer apply thereto. ('17 c. 434 § 2)

[7220—]3. **Salary of judges in certain counties**—In each county of this state now or hereafter containing not less than eighty congressional townships, and now or hereafter having an assessed valuation of more than twenty-five million dollars, and less than fifty million dollars, the probate judge shall receive an annual salary of one hundred dollars for each one million dollars of the total assessed valuation of said county as determined for the then next preceding year. Provided, however, that such annual salary shall not exceed three thousand dollars, and shall be in full compensation for all services rendered, and in lieu of all fees heretofore permitted to be retained by probate judges in such counties. ('15 c. 63 § 1)

Section 5 repeals inconsistent acts, etc.

[7220—]4. **Same—Fees—Record**—In such counties the probate judge shall keep in his office a record of all fees collected by him under the provisions of Section 3634, Revised Laws 1905 [7212], and of all other fees allowed by law to be collected by him; and he shall pay the money so received into the county treasury at the end of each calendar month, and take the treasurer's receipt therefor. ('15 c. 63 § 2)

[7220—]5. **Same—Salary of clerk**—In addition to such salary of the probate judge, the clerk of the probate court in such counties shall receive an annual salary of three hundred sixty dollars, and in addition thereto such further sum as the county board may allow, not to exceed a total annual salary of twelve hundred dollars. ('15 c. 63 § 3)

[7220—]6. **Same—Salary, etc., how paid**—Such salary and clerk hire shall be paid in equal monthly installments out of the county treasury, upon warrants of the county auditor in favor of the person entitled thereto, in the same manner as other county officers are paid. ('15 c. 63 § 4)

[7220—]7. **Additional clerk hire in certain counties**—In all counties of this state containing a population of not less than 45,000 and not more than 75,000 and in which the salary of the judges of probate is now or may hereafter be less than that provided for by the General Laws of the State of Minnesota, the county commissioners of such county may allow a sum not to exceed \$900.00 per annum for additional clerk hire in said probate office in addition to the sum now allowed by law for the salary of the clerk of probate. Said amount so to be allowed to be fixed by the county commissioners for the year 1917 at their next meeting after the passage of this act and annually thereafter on the first meeting of each year, and said clerk hire shall in all cases be for actual services rendered and shall be paid monthly upon the presentation of a certificate of the judge of probate to the county auditor who shall issue to such person entitled thereto his warrant upon the county treasurer of said county for the amount therefor. ('05 c. 155, amended '17 c. 128 § 1)

[7220—]8. **Same—Not to affect existing laws**—This act shall in no way affect or modify any existing laws applicable to said county relating to the salaries and compensation of judges of probate and clerks of probate. ('17 c. 128 § 2)

## PROBATE PRACTICE

**7227. Proceedings, how begun—**

Appointment of a special administrator without a petition therefor is a nullity (128-112, 150+385). Executors and Administrators, Ⓒ22(3), 29(2).

[7229—]1. **Orders and citations to be issued by clerk, when—**The judge of the probate court of any county in this state in which county there is a clerk of the probate court may by written authorization duly recorded in the office of the clerk of said probate court authorize said clerk to issue the following orders and citations and sign the same in the name of the clerk instead of having the same signed in the name of the judge to-wit:

1st. Citation for hearing of petition for letters of administration.

2nd. Citations for hearing petition for the admission of a will to probate and the issuance of letters testamentary or of administration with will annexed.

3rd. Citation for hearing, petition for decree of descent.

4th. Orders limiting the time to file claims and fixing the date of hearing of said claims.

5th. Citations for hearing petition to sell, lease or mortgage land.

6th. Citations for hearing petition for settlement and distribution in estates of deceased persons. ('17 c. 216 § 1)

This act is entitled "An act to amend" 1915 c. 286, etc.

[7229—]2. **Newspaper for publication, how designated—**Whenever published notice or citation is required to be given in any proceeding in probate court, the judge of probate shall order such notice or citation to be published in such legal newspaper within the county as shall be designated by the petitioner in such proceedings or by his attorney; provided, that a notice to creditors to present claims against an estate shall be published in such legal newspaper within the county as shall be designated by the representative of the estate in which such notice is given, or by his attorney. If such designation is not made, a judge of probate may order the notice to be published in any legal newspaper within the county. ('17 c. 151 § 1)

**7233. Notice of filing orders—**

The notice required by this section does not limit the time for appeal from the judgment rendered (133-20, 157+709). Courts, Ⓒ202(5).

## DESCENT OF PROPERTY

**7236. Real estate in general—Posthumous children—**

A parent may, by will, entirely disinherit a child (131-56, 154+741, L. R. A. 1916D, 421). Descent and Distribution, Ⓒ47(1); Wills, Ⓒ1.

Homestead entryman on public lands, who is entitled to a patent by having commuted and made final proof and payment is the equitable owner of the land, and same descends according to state law (122-1, 141+851). Descent and Distribution, Ⓒ8; Public Lands, Ⓒ35(4, 5).

**7237. Homestead—**

Acceptance of testamentary provisions as precluding claim to proceeds of homestead (122-113, 142+16). Homestead, Ⓒ136.

The surviving spouse, who has consented to her husband's will, cannot withdraw her consent after his death, and elect to take under the statute, unless the consent was procured by the husband by concealment from the wife of his true financial condition (129-442, 152+845, L. R. A. 1915E, 815). Wills, Ⓒ796.

The right of the surviving spouse vests at the death of the decedent, and is not dependent on a setting apart of the homestead under §§ 7307 and 7308, and, in the absence of a setting apart, the surviving spouse, and not the administrator, is entitled to possession (130-462, 153+876). Homestead, Ⓒ140.

The fee vests in the children, subject to the life estate of the surviving husband, and the husband cannot waive, burden, or impair their remainder interest, by any acts as life tenant or as administrator (130-462, 153+876). Homestead, Ⓒ142(2).

Where the surviving husband is tenant for life of the homestead of the deceased spouse, and also administrator of her estate, he cannot charge the estate with taxes paid or improvements made (130-462, 153+876). Executors and Administrators, Ⓒ110.

**7238. Lands other than homestead**—The surviving spouse shall also inherit an undivided one-third of all other lands of which decedent at any time during coverture was seized or possessed, to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing, except such as have been transferred or sold by judicial partition proceeding or appropriated to the payment of decedent's debts by either execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens. But the land so inherited shall be subject in their just proportion to such debts of the decedent as are not paid out of his personal estate. The residue of such other lands, or, if there be no surviving spouse, then the whole thereof, shall descend, subject to the debts of the intestate, in the manner following:

First—in equal shares to his surviving children, and to the lawful issue of his deceased children, by right of representation.

Second—if there is no surviving child and no lawful issue of any deceased child, and the intestate leaves a surviving spouse, then the whole estate shall descend to such spouse.

Third—if the intestate leaves no issue nor spouse, his estate shall descend to his father and mother in equal shares, or, if but one survives, then to such survivor.

Fourth—if there be no surviving issue nor spouse, nor father nor mother, his estate shall descend in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister, by right or [of] representation.

Fifth—if the intestate leaves neither issue, spouse, father, mother, brother nor sister his estate shall descend to his next kin in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote.

Sixth—if any person dies leaving several children, or leaving one child and the issue of one or more other children, any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal share to the other children of the same parent, and to the issue of any such other children who have died, by right of representation.

Seventh—if, at the death of such child, who dies under age and not having been married, all the other children of his said parent being also dead, and any of them having left issue, the estate that came to such child by inheritance from his said parent shall descend to all the issue of the other children of the same parent, according to the right of representation.

Eighth—if the intestate leaves no spouse nor kindred, his estate shall escheat to the state. (Amended '17 c. 272 § 1)

**In general**—The surviving spouse and next of kin, as designated in § 8175, come within the designation of heirs at law as used in this section (125-357, 147+278). Death, Ⓒ32.

Administrator taking possession of land of the estate is chargeable with the rents and profits received therefrom, and if the amount thereof cannot be determined he is chargeable with the rental value thereof (130-462, 153+876). Executors and Administrators, Ⓒ477.

The right of a surviving spouse under this section is not affected by § 7242 (122-190, 142+129). Descent and Distribution, Ⓒ53.

Where a decedent leaves neither issue, spouse, father, mother, brother, or sister, but leaves issue of deceased brothers and sisters, his property descends to them per stirpes, and not per capita, under this section as it now stands, giving effect to the change in the law made by R. L. 1905 (135-145, 160+253). Descent and Distribution, Ⓒ43.

**Wife's interest in husband's realty**—A vendee in a contract of sale of lands, who pays part of the price together with taxes and assessments, and enters into possession and makes improvements, has an equitable title to which his wife's statutory marital right attaches, though the contract provides that the vendor may convey to the vendee's assignees. In such case the wife, in order to maintain an action at law against the vendor to recover damages on the ground that he had conspired with the husband to cancel the contract, must show that the land has passed into the hands of an innocent purchaser (123-483, 144+222). Husband and Wife, Ⓒ6(2, 3).

Where husband, without joinder of wife, entered into agreement for purchase of land, the wife could not resist a reformation of the contract on the ground that such reformation would affect her inchoate interest in the property (129-217, 152+268). Husband and Wife, Ⓒ212.

**Husband's interest in wife's realty**—Upon the death of a wife possessing a vested estate in remainder, which accrued upon the death of the testator, her estate passes to her husband (126-247, 148+112). Descent and Distribution, Ⓒ17.

An instrument held a lease and not a conditional sale of ore in place, so that the surviving husband of the lessor was entitled to one-third of the royalties under this section (122-190, 142+129). Mines and Minerals, Ⓒ56.

**Election**—The surviving spouse of a nonresident testator may renounce, though she also is a nonresident. (122-190, 142+129). Wills, Ⓒ779.

**Withdrawal of consent to will**—Consent given by the surviving spouse cannot be withdrawn, and an election made to take under the statute, unless for legal grounds, such as a failure of decedent to make a fair disclosure of his property is invalid. (129-442, 152+845, L. R. A. 1915E, 815). Wills, Ⓒ796.

[7238—]1. **Dower and curtesy, etc., in lands conveyed by spouse, etc., prior to January 1, 1902, abolished**—All inchoate estates in dower and curtesy, and all inchoate estates or statutory interests in lieu of dower and curtesy, are hereby abolished in all lands in this state which have been conveyed prior to January 1, 1902, by the husband or wife of the one entitled to such inchoate dower or curtesy, or statutory interest, by a conveyance in writing. ('17 c. 450 § 1)

[7238—]2. **Same—Limitation of actions**—No action for the recovery of real property, or of any right therein, or the possession thereof, shall be maintained by any person having any estate in dower or by the curtesy or any estate or statutory interest in lieu of dower or by the curtesy therein, or by anyone claiming, by, through or under any such person, where it appears that the husband and wife of such person conveyed such real property, or any interest therein, by a conveyance in writing, prior to the first day of January, 1902; and no action shall be maintained for the recovery of real property, or of any right therein, or the possession thereof, by any person claiming as heir of any person who has conveyed land claimed as a homestead at the time of the conveyance and where such conveyance was made prior to January 1st, 1902, unless such action shall be commenced on or prior to the first day of December, 1917, and notice thereof filed for record at the time of the commencement of said action in the office of the register of deeds in the county where said real property is situate. ('17 c. 450 § 2)

#### 7239. Election—Interpretation—Devise not additional—

**In general**—This section applies by its terms only to cases where the will of a deceased parent makes provision for a surviving spouse in lieu of the rights in his or her estate secured by statute, and not to a case where testator has no lineal descendants (135-357, 160+1016, L. R. A. 1917C, 504). Wills, Ⓒ800.

A contract by a widow, by which she waived her statutory rights in testator's estate, held fair and binding (161+395). Wills, Ⓒ740(2, 3, 4).

**Withdrawal of consent to will**—A surviving spouse cannot withdraw consent to decedent's will and elect to take under the statute, in absence of legal grounds for such withdrawal, such as a failure of decedent to make a fair disclosure of his property at the time the consent was given. A husband held to have failed to make a fair disclosure to his wife as to his property at the time she consented to his will, so that she was entitled to withdraw such consent and elect to take under the statute (129-442, 152+845, L. R. A. 1915E, 815). Wills, Ⓒ796.

**Nonresident spouse**—The nonresident surviving spouse of a nonresident testator may renounce under this statute (122-190, 142+129). Wills, Ⓒ779.

Renunciation by nonresident surviving spouse of nonresident testator is binding in this state and elsewhere (122-190, 142+129). Wills, Ⓒ801.

The renunciation by a nonresident spouse of a nonresident testator must be made in this state, irrespective of the law of the domicile of the parties (122-190, 142+129). Descent and Distribution, Ⓒ4.

Though a widow named in a will affecting land in this state is not required to elect under this section, because testator left no lineal descendants, she may be prevented by common-law estoppel, from taking under the will, where she has made an election to take under the will in Iowa, under the laws of that state (135-357, 160+1016, L. R. A. 1917C, 504). Wills, Ⓒ800.

#### 7240. Illegitimate child—

The declaration of paternity must be made by the real father of the child. A "competent attesting witness" under this section is a competent witness, who, at the request of the person making the writing containing the declaration of legitimacy, subscribes the same as such witness (130-256, 153+324; 130-256, 153+593). Bastards, Ⓒ13.

#### 7242. Degrees, how computed—

This section does not affect the rights of the surviving spouse under § 7238 (122-190, 142+129). Descent and Distribution, Ⓒ53.

A husband may transfer his personal property as a gift under such circumstances as to constitute a fraud upon the marital rights of his wife. Findings that gifts by a husband,

directly and through a trustee, to children by former marriages, were not fraudulently made, held supported by the evidence (125-190, 145+1067). Husband and Wife, Ⓒ6(3).

**7243. Personal Estate—Distribution—**When any person dies owning personal property, or any interest therein, the same shall be disposed of and distributed as follows:

1. The widow shall be allowed the wearing apparel of her deceased husband, his household furniture not exceeding five hundred dollars in value, and other personal property not exceeding the same amount, both to be selected by her; and she shall receive such allowances when she takes the provisions made for her by her husband's will as well as when he dies intestate.

2. In case there is no surviving spouse, then the minor children, if any, shall receive the same allowances, to be selected by their guardian.

3. The widow or children, or both, constituting the family of the decedent, shall have such reasonable allowance out of his personal estate as the probate court deems necessary for their maintenance during the settlement of the estate, according to their circumstances, which in case of an insolvent estate shall not be longer than one year after administration is granted, nor, in any case, after the distributive share of the widow in the residue of the personal estate has been assigned to her.

4. If from the inventory of an intestate estate it appears that the value of the whole estate does not exceed the sum of one hundred and fifty dollars in addition to the allowances made for the widow and children, the court, after the payment of the funeral charges and expenses of administration, shall assign for the use and support of the widow or the children, or both, constituting the family of the decedent, the whole of said estate.

5. If the personal estate amounts to more than the allowances mentioned in this section, the excess thereof, after the payment of the funeral charges and expenses of administration, shall be applied to the payment of the decedent's debts.

6. The residue, if any, of the personal estate shall be distributed as follows: one-third thereof to the surviving spouse if any free from any testamentary disposition thereof to which survivor shall not have consented in writing; the remainder of such residue, or, if there be no surviving spouse, then the whole thereof, except as otherwise disposed of by will, shall be distributed in the same proportions to the same persons and for the same purposes as prescribed for descent of real estate by Section 7238 subs. 1-6.

7. All the provisions of this Section shall apply as well to a surviving husband as to a surviving wife. (Amended '15 c. 350 § 1)

"An act to amend section 7243, General Statutes Minnesota for 1913, relating to descent of personal estate and distribution," approved April 24, 1915. This amended section appears to supersede the amendment made by 1915 c. 331, "An act to amend subdivision 3 of section 7243," etc., approved April 24, 1915.

**In general**—The surviving spouse and next of kin, as designated in § 8175, come within the designation of heirs at law, as used in this section (125-317, 147+278). Death, Ⓒ32.

A surviving spouse cannot withdraw consent to the will of decedent, and elect to take under the statute, unless there exist legal grounds for such withdrawal, such as a failure by decedent to make a fair disclosure of his property at the time the consent was given (129-442, 152+845, L. R. A. 1915E, 815). Wills, Ⓒ796.

**Subd. 1**—The widow is entitled to the \$500, though she assented to her husband's will at the time of its execution, though such will provided that the provision for the wife was "in lieu of any provisions made for her by the laws or statutes of the state" (127-223, 149+303). Wills, Ⓒ800.

The right of the surviving spouse to select personal property, if not exercised in his lifetime, may be exercised by his administrator (130-462, 153+876). Executors and Administrators, Ⓒ191.

When a widow dies prior to an allowance under this section, the right of selection survives to her personal representative (132-409, 157+648). Executors and Administrators, Ⓒ191.

7244. [Superseded.]

See §§ [7244—]1, [7244—]2.

**[7244—]1. Property escheated—Determination of heirship**—When any person who has died within the last past fifteen years in the State of Minnesota, or shall hereafter die being a resident of the State of Minnesota at the time of his death or owning property in said state, and his estate having been duly administered upon in the probate court of the county having jurisdiction

thereof, and leaving no known spouse or kindred, and said estate having been fully administered upon, and the balance in the hands of the representative of said estate having by order of said court escheated to, and been paid to the State of Minnesota, and if it shall be made to appear that said deceased person, in fact, left heir or heirs to his estate, then, upon the proper presentation of proofs of such heirship and amount so escheated to the district court of the county wherein such probate proceedings were had, either in term time or vacation, upon notice of at least twenty days to the attorney general in said state of the time and place of hearing such proofs, and if upon such hearing the said district court shall find that such deceased person left heir or heirs, said court shall determine who such heir or heirs are and the amount so escheated, and file its decision to that effect and a certified copy of said decision shall be forthwith filed with the state auditor. ('17 c. 72 § 1)

[7244—]2. **Same—Refundment and transfer to heirs, etc.**—When the said court has filed its decision in an escheated estate as aforesaid, and it was determined in said decision that certain heir or heirs are entitled to money or property heretofore escheated to the State of Minnesota, it shall be the duty of the state auditor of the state to recommend an appropriation, in writing, by the state legislature, if in session, or, if not in session, then to the next legislature for the repayment or the reimbursement of said money, or the transfer of said property to such heir or heirs, or to his or their attorney in fact, upon the recording of his power of attorney in the office of the state auditor, and the state auditor shall draw his warrant on the state treasurer of said state for the payment of the amount so escheated, if in money; and if in property the state auditor under his seal shall duly execute a proper transfer thereof. ('17 c. 72 § 2)

**7249. Government homestead patented to "heirs"—**

After final proof and payment on commutation under homestead laws, but before patent issues, the land descends according to the state laws (122-1, 141+851). Descent and Distribution, 8; Executors and Administrators, 39; Public Lands, 35(4, 5).

[7249—]1. **Persons guilty of felonious homicide not to inherit, etc.—Insurance companies—Procedure of insurance companies**—No person who feloniously takes or causes or procures another so to take the life of another shall inherit from such person or receive any interest in the estate of the decedent as surviving spouse, or take by devise or legacy from him and [any] portion of his estate, and no beneficiary of any policy of insurance, or certificate of membership issued by any benevolent association or organization, payable upon the death or disability of any person, who in like manner takes or causes or procures to be taken the life upon which such policy or certificate is issued, or who causes or procures a disability of such person, shall take the proceeds of such policy or certificate; but in every instance mentioned in this act, all benefits that would accrue to any such person upon the death or disability of the person whose life is thus taken or who is thus disabled, shall become subject to distribution among the other heirs of such deceased person according to the law of descent and distribution in this state, in case of death, and in case of disability the benefits thereunder shall be paid to the disabled person.

Provided, however, that an insurance company shall be discharged of all liability under a policy issued by it upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued. ('17 c. 353 § 1)

## WILLS—EXECUTION, EFFECT, ETC.

## 7250. Who may make a will—How executed—

Cited (122-190, 142+129).

Undue influence (see 130-92, 153+131).

**Will as distinguished from a deed**—Deed or will (see 130-320, 153+604). Wills, Ⓒ88(1), 90.

A trust deed held not testamentary in character (125-190, 145+1067). Wills, Ⓒ88(1).

A deed delivered by the grantor to a third person, with instructions to deliver same to the grantee on the death of the grantor held not testamentary in character (124-346, 145+112). Wills, Ⓒ88(1).

In a suit to set aside a deed of two lots to defendant as void, evidence held not to show any basis for contention that the deed was an attempted testamentary disposition of the property (162+527). Wills, Ⓒ93.

**Testamentary capacity**—An adjudication of insanity creates a presumption of testamentary incapacity, but such presumption is not conclusive, and may be rebutted by showing that the derangement is not general, and has no reference to the subject-matter of the will (130-92, 153+131). Wills, Ⓒ52(4).

Evidence held to show mental capacity, and insufficient to show undue influence (132-379, 157+505). Wills, Ⓒ52(1), 166(1).

Evidence held to support a finding of testamentary capacity and that the will was not the result of undue influence (131-439, 155+392). Wills, Ⓒ55(7), 166(1).

Evidence held to show want of testamentary capacity (123-259, 143+726). Wills, Ⓒ55(5).

Evidence held to support a verdict finding that testatrix was mentally competent to make a will, and that the will was not procured by undue influence (128-277, 150+914). Wills, Ⓒ55(5), 166(1, 8).

A testator must understand the nature and situation of his property, and the claims of others on his bounty or his remembrance, and he must be able to hold these things in his mind long enough to form a rational judgment concerning them. A person who is unable to understand, without being prompted, the nature and importance of the business he is transacting, has not capacity to make a will (129-248, 152+541). Wills, Ⓒ50, 55(9).

An instruction in a will contest held not erroneous because it failed to draw a distinction between mental capacity and positive insanity (126-275, 148+117). Wills, Ⓒ329(1, 2).

Evidence as to mental capacity of a testator held to support a verdict in favor of proponent, so that a motion for new trial was properly denied (126-275, 148+117). Wills, Ⓒ400.

Where the judgment in proceedings for the appointment of a guardian of an incompetent, instituted after the will is executed, does not find the testator incompetent at a time prior to the rendition of such judgment, it is competent evidence in proceedings for the probate of the will, and its probative value is largely for the determination of the trial court. The fact that the application was not for the purpose of declaring testatrix insane, but merely for the purpose of determining her inability to manage her affairs, did not render the adjudication inadmissible. The petition on such application is not admissible as an admission against interest by the petitioner, who was named as a devisee in the will (124-27, 144+412, Ann. Cas. 1915B, 1006). Wills, Ⓒ53(3).

**Witnesses**—Evidence held to sustain a special verdict to the effect that a will was signed by testator in the presence of two persons, who duly attested the same and subscribed their names as witnesses (161+261). Wills, Ⓒ302(1).

## 7253. Wills made out of the state—

Cited (122-190, 142+129).

## 7256. Written wills, how revoked or canceled—

Where testator devised a farm to a son, and made him a residuary legatee, and bequeathed certain sums of money to two daughters, "said sums of money to be paid by my son," a subsequent conveyance of the farm by the testator to the son, and other conveyances to the daughters of land specifically devised to them, did not revoke the specific legacies of money to the daughters, and such legacies were properly deducted from the son's share of the residue (135-377, 160+1025). Wills, Ⓒ194, 822.

## 7258. Duty of custodian of will—

The person named in a will as executor is under no obligation to secure the probate of the will, and where he secures allowance of the will in the probate court, but is ultimately unsuccessful on a contest for want of testamentary capacity, he is not entitled to payment out of the fund for his services and expenses in resisting the contest (133-278, 158+395). Executors and Administrators, Ⓒ488.

7259. After-born child—If any child of a testator, born after the death of such testator, has no provision made for him by his father in his will or otherwise, he shall take the same share of his father's estate that he would have

taken if the father had died intestate unless it appears that such omission was intentional. (Amended '15 c. 343 § 1)

Section 2 repeals inconsistent acts, etc.

125-40, 145+623, 51 L. R. A. (N. S.) 645; notes under § 7260.

**7260. Child not provided for in will—**

Under this section parol testimony is admissible to show that the omission of the child was intentional. The burden is upon those claiming that the omission was intentional, to prove such fact (125-40, 145+623, 51 L. R. A. [N. S.] 645). Descent and Distribution, Ⓒ47(2).

The rights given by this section to a pretermitted child must be enforced in the probate court, and if not so enforced are barred by the final decree of that court (131-56, 154+741, L. R. A. 1916D, 421). Descent and Distribution, Ⓒ89.

## PROBATE OF WILLS

**7266. Who may petition for—**

The law does not require the person named in a will as executor to secure the probate of the will, and he is not entitled to payment out of the fund for his services and expenses in unsuccessfully resisting a contest of the will on the ground of testamentary incapacity (133-278, 158+395). Executors and Administrators, Ⓒ488.

**7268. Filing petition—Notice—Proof and allowance of will—**

Cited and applied (132-379, 157+505).

**7271. Proof required in case of contest—**

129-460, 152+872.

Cited (123-259, 143+726).

Where the will is contested, neither party is limited to the testimony of the subscribing witnesses, and either party may present other evidence. Evidence, on a will contest, held to support an order admitting the will to probate (128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101). Wills, Ⓒ303(6).

Where proponent called and examined a subscribing witness, failure to ask him in regard to the sanity of testator did not defeat the will, it being contestant's duty, if he desired his testimony as to matters omitted, to examine him in respect thereto (128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101). Wills, Ⓒ303(4).

When contestant makes out a prima facie case of undue influence, the burden is then cast on the proponent to show that the instrument is the will of testator. The prima facie case of contestant may consist of evidence of inequality, accompanied by evidence of motive and opportunity on the part of the person preferred, and some evidence that he did in fact exert influence (122-463, 142+729). Wills, Ⓒ163(1).

**7273. When subsequent will is presented—**

129-460, 152+872.

## FOREIGN WILLS

**7274. Wills proved elsewhere—**

Election by surviving spouse, see notes under §§ 7238, 7239.

**7275. Filing—Petition—Notice—**

Election by surviving spouse, see notes under §§ 7238, 7239.

**7276. Hearing proofs of probate of foreign will—**

Election by surviving spouse, see notes under §§ 7238, 7239.

**7277. Letters testamentary, etc., to be granted—**

Election by surviving spouse, see notes under §§ 7238, 7239.

**7278. Ancillary administration—**

This section is not a statute of devolution, but, construed with the general statutes of descent and distribution, merely places foreign wills on the same plane with domestic wills (122-190, 142+129). Wills, Ⓒ436.

## LOST OR DESTROYED WILLS

**7280. Will must have been in existence—**No such will shall be established unless the same is proved to have been in existence at the time of the testator's death, or to have been fraudulently destroyed in his lifetime, nor unless its provisions are clearly and distinctly proved by clear and satisfactory evidence. (Amended '17 c. 334 § 1)

## GRANTING LETTERS OF ADMINISTRATION

7287. **Who entitled to administration**—Administration of the estate of a person dying intestate shall be granted to one or more of the persons hereinafter mentioned, and in the following order:

1. The surviving spouse or next of kin or both, as the court may determine, or some person selected by them or either of them, provided that in any case the person appointed shall be suitable and competent to discharge the trust.

2. If all such persons are incompetent or unsuitable, or refuse to accept, or if the surviving spouse or next of kin, for thirty days after the death of the intestate, neglect to apply for administration, the same may be granted to one or more of the principal creditors, if any such are competent and willing to take it, or to some other person who may be interested in the administration of the estate. If the decedent was a native of any foreign country and the surviving spouse and next of kin neglect for thirty days after his death to apply for administration, the same may be granted to the consul or other representative of the country of which the decedent was a native, residing in this state, who has filed a copy of his appointment with the secretary of state, or to such person as he may select, if suitable and competent to discharge the trust. But the court in any case arising under this subdivision shall have the discretion to appoint one or more creditors, or other person interested, or to appoint any suitable or competent person interested in the estate by purchase or otherwise.

3. If the person so appointed neglects for thirty days, after written notice of such appointment, under the seal of the probate court, served personally or by mail, to file the oath and bond required by law and the court, such neglect shall be deemed a refusal to serve, and the court may appoint such other person or persons as are next entitled to administer such estate. Such person may be appointed without notice. (Amended '17 c. 513 § 1)

Cited (129-279, 152+413).

Letters of administration issued to a person not entitled thereto are voidable and may be revoked, but are not void ab initio, and are effective to the extent necessary to protect those in good faith acting in reliance upon them (162+454). Executors and Administrators, ¶29(1).

7288. **Petition, what it must show**—

A defective petition may render the proceedings voidable, but not void, and jurisdiction may attach notwithstanding a defective petition. So held in the case of one appointed administrator of the estate of his deceased wife, to whom he was married while he had another wife living from whom he had not been lawfully divorced; such facts not appearing by the record in the probate proceedings (162+454). Executors and Administrators, ¶29(1).

7289. **Hearing—Contest—Granting letters**—

Letters of administration not subject to collateral attack for mere irregularities (122-1, 141+851). Executors and Administrators, ¶29(2).

7292. **Administrator de bonis non**—

An administrator de bonis non has power to maintain an action on the bond of his predecessor to recover a fund recovered in an action maintained by the predecessor for the wrongful death of the intestate (123-165, 143+255). Executors and Administrators, ¶537(6).

7293. **Special administrator**—

An order appointing a special administrator is not appealable (129-279, 152+413).

In view of § 7227, the appointment of a special administrator without a petition therefor is a nullity (128-112, 150+385). Executors and Administrators, ¶22, 29.

[7295—]1. **Special administrator in certain small estates**—Whenever it shall be made to appear satisfactorily to the judge of any probate court that the personal property of an intestate deceased person over the administration of whose estate said judge of probate would be entitled to jurisdiction under existing laws, consists only of such property as by existing law would be exempt from application towards the payment of debts and does not exceed in value six hundred and fifty dollars (\$650.00) such judge may appoint a special administrator, with or without notice, who shall proceed to speedily administer said estate according to the provisions of this chapter. Before en-

tering upon his duties such special administrator shall file in the court appointing him his bond with sufficient sureties in such sum as the court may order and his oath to faithfully and lawfully administer said estate according to law. ('17 c. 251 § 1)

See §§ [7403—]1 to [7403—]4.

[7295—]2. **Same—Inventory, account, etc.**—Within fourteen days following the issuance of letters to such special administrator he shall file in the probate court a duly verified inventory of the property belonging to the estate of the decedent and a statement of the liabilities of said estate so far as known, together with an appraisal by two disinterested parties, who shall be appointed by the court, of the property belonging to said estate. If from such inventory and appraisal and any further evidence before court it appears that the estate of the deceased does not exceed in valuation the amount of claims for funeral bills and last sickness, taxes, expenses of administration and statutory allowance to surviving spouse and family of deceased and any other property exempt by law from application towards the payment of debts said special administrator shall immediately file his final account of the administration of said estate. ('17 c. 251 § 2)

[7295—]3. **Same—Notice of hearing**—Upon the filing of such account the court may require personal service of notice of hearing of said account on all heirs at law and persons interested in said estate. ('17 c. 251 § 3)

[7295—]4. **Same—Order allowing account**—Upon the hearing of said account if it shall satisfactorily appear to the court that the estate of the deceased does not exceed in valuation the amount of claims for last sickness and funeral bills, taxes, expenses of administration, allowance to surviving spouse and family of deceased and any other property exempted by law from application towards the payment of debts of deceased the court shall enter its order adjusting and allowing said account as adjusted. ('17 c. 251 § 4)

[7295—]5. **Same—Administrator when to be discharged**—Upon the filing in such court of vouchers for all disbursements subject to payment paid by said special administrator, the court shall enter its order discharging such special administrator and the sureties on his bond from further liability. Provided, however, that where there is a claim for the alleged wrongful death of the decedent no such special administrator or the sureties on his bond shall be discharged until he shall have filed in the probate court a certified copy of the order of the district court approving such settlement as may be made of such wrongful death claim, and also a certified copy of the order of the district court distributing the moneys received for wrongful death to the persons thereunto entitled. ('17 c. 251 § 5)

## REPRESENTATIVES—GENERAL PROVISIONS

### 7296. General powers and duties—

Executor may sue to recover proceeds of land condemned (121-233, 141+170). Eminent Domain, Ⓒ156; Executors and Administrators, Ⓒ130(1).

Under this section the personal representative of a decedent can maintain an action to set aside decedent's contract for the sale of real property upon the ground of mental incompetency (162+1070). Executors and Administrators, Ⓒ129(1).

An administrator held entitled to sue for the purchase price of land, though the sole heir of decedent conveyed the premises to defendant and received the consideration (126-303, 144+223; 126-303, 148+288). Executors and Administrators, Ⓒ40.

### 7297. Liability—Collection of debts, etc.—

Evidence held insufficient to justify the conclusion that an administrator was at fault in the loss of property of the estate, and that an order charging his account with the value thereof was error (133-421, 158+703). Executors and Administrators, Ⓒ506(3).

### 7298. Allowances to executors, etc.—

The probate court may determine the amount that each of two or more executors shall receive, and when that court allows a lump sum the district court may apportion the same among the executors according to their respective services to the estate (161+497). Executors and Administrators, Ⓒ498.

## SETTING ASIDE HOMESTEAD, ETC.

7307. **Petition—**

Heirs may waive homestead right under the federal public land laws, and permit sale to pay debts (122-1, 141+851). Public Lands, [§35\(4, 5\)](#).

As the right of the surviving spouse in the homestead vests at the death of the departed spouse, the statutory provisions for setting it apart merely prescribe a remedy, and the administrator is not entitled to the possession of the homestead because it has not been set apart under the statute (130-462, 153+876). Homestead, [§140](#).

## COLLECTION OF ASSETS

7312. **Disposition of real estate so purchased—Title of foreign representative to all real estate—**Any real estate purchased by an executor or administrator as such at a foreclosure sale, or sale on execution for the recovery of a debt due the estate, shall be held, reported, and may be sold and conveyed as the personal estate of the decedent; and if not so sold it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the decedent, but the legal title of all real estate so acquired, or in any other manner whatever acquired, by a foreign executor, administrator or guardian, shall vest in such executor, administrator or guardian, who shall represent the interest of all parties concerned, and shall have full power of disposition over such real estate. (Amended '15 c. 40 § 1)

## CLAIMS AGAINST ESTATES

7320. **Order limiting time to present claims—**

Liability of heirs inheriting homestead, constituting only property of the estate, under § 8182 et seq., without presentation of claim to probate court, and without order limiting time for presentation of claims (see 161+413). Descent and Distribution, [§140](#). See, also, note under § 8182, post.

7322. **Extension of time for cause—**

Where a claim of apparent merit is filed out of time, the supreme court will not interfere with the discretion of the probate court in permitting it to be filed, unless such discretion is clearly abused (123-57, 142+945). Executors and Administrators, [§225\(2\)](#), 233.

Applications to file claims after the time limited is addressed to the sound discretion of the probate court. The claimant must show good cause why he did not file his claim in time, and he must proceed with diligence after discovery of default. A delay of eight months after instructions to an attorney to present the claim, seven months after the attorney was advised of the default, six months after the time did expire, four months after the attorney was reminded of the default, and until hearing on the final accounting, is such laches that there was no abuse of discretion in denying an application to receive the claim (133-172, 157+1075). Executors and Administrators, [§225\(8\)](#), 233.

7323. **Claims, how presented or barred—**

Evidence on wife's claim against husband's estate for balance due on household necessities paid for by her held to sustain a conclusion that she was entitled to recover (162+1060). Executors and Administrators, [§221\(6\)](#).

Under 1899, c. 265, claims theretofore paid by the administrator without having been allowed by the probate court may be credited to him in his final account upon proof that such claims were just and existing demands (130-462, 153+876). Executors and Administrators, [§481](#).

7327. **Order adjudicating claim—Effect—Interest—**

A decree of the United States circuit court, allowing a claim against the estate of a decedent, and ordering its payment was conclusive as against the executors, and an order of the probate court was not necessary to warrant its payment (125-368, 147+246). Judgment, [§829\(3\)](#).

## PAYMENT OF DEBTS AND LEGACIES

7336. **Real estate may be sold, when—**

Heirs of deceased homesteader on government land may waive exemption rights, and permit sale to pay debts (122-1, 141+851). Public Lands, [§35\(4, 5\)](#).

A government homestead after final proof and payment, but before issuance of patent, may be sold by order of the probate court, and such sale is not open to collateral attack on the ground that the order was improperly granted (122-1, 141+851). Executors and Administrators, [§383](#); Public Lands, [§140](#).

[7343—]1. **Claim of state against estates of certain insane persons—** Whenever any patient in a state institution for the insane dies and does not leave surviving him spouse, children, grandchildren or parents, then and in such case the state shall have a claim for maintenance, treatment and support against the estate of such deceased person, which claim shall be computed at the rate of one hundred twenty dollars per year for the time such person was in such institution and be verified by the superintendent of the institution wherein such deceased person was confined. Provided, however, that the estate of such deceased insane person shall be entitled to a credit upon such claim of any sum or sums of money that may have been paid to the state for his or her maintenance, treatment or support in such institution. ('17 c. 409 § 1)

Section 2 repeals inconsistent acts, etc.

## DISPOSAL OF REALTY BY REPRESENTATIVES

### 7344. Real estate may be sold, when—

Propriety of sale not open to question in collateral proceeding (122-1, 141+851). Executors and Administrators, Ⓒ383.

### 7354. Bond and oath before sale—

The special or sale bond required by this section is additional or cumulative security, and not a substitute for the general bond provided for by § 7416 (135-346, 160+859). Guardian and Ward, Ⓒ92.

7358. **Husband or wife must join, when—Guardian of insane spouse—**The homestead of a ward having a spouse shall not be sold or mortgaged by his guardian unless such spouse shall join in the deed or mortgage, nor shall the sale or mortgage of any land of a ward by his guardian in any manner affect the interests or estate of such spouse therein, unless he or she shall join in the conveyance; provided, that if the spouse of such ward has been adjudged insane or incompetent to transact his or her business, or manage his or her estate, it shall not be necessary for such insane or incompetent spouse to join in such conveyance, but a guardian of such insane or incompetent spouse shall first be appointed by the probate court of the proper county, and such guardian shall join in such conveyance after first being authorized so to do by order of such probate court. (Amended '15 c. 258 § 1)

### 7369. Sale not to be avoided, when—

Propriety of order of sale cannot be questioned by heirs in collateral proceeding (122-1, 141+851). Executors and Administrators, Ⓒ383.

[7375—]1. **Certain executor's deeds legalized—**All deeds of land in this state heretofore and between the 20th day of August, 1910, and the 30th day of September, 1910, made, executed, acknowledged and delivered by an executor or executors under a power of sale in a will, which were signed and acknowledged by such executor or executors personally and not as such executor or executors, but which deeds contained in the body thereof recitals that the same were made by such vendor or vendors as executor or executors of an estate therein-named, and such deeds were in all other respects duly and properly drawn, executed and acknowledged, and afterwards duly recorded in the office of the register of deeds of the proper county, are with the records thereof in all things hereby legalized, and shall have the same effect as if they were in all things drawn, executed, acknowledged, delivered and recorded according to law, provided that this act shall not extend to nor apply to any action or proceeding now pending. ('17 c. 423 § 1)

[7375—]2. **Certain decrees for conveyance of land under contract legalized—**That any decree for conveyance of real estate under contract, by an administrator or executor, made by any probate court of this state, in the matter of the estate of a decedent, when the order for hearing the petition for such decree was published the requisite number of times in a legal and proper newspaper, but the date of such hearing was fixed in said order and the hearing held on a date less than three weeks from the first publication

of such order; and such decree issued; and which decree or a certified copy thereof, has been of record in the office of the register of deeds of the county where the real estate thereby affected was at the time of making such record, or is situate, for a period of not less than ten years prior to the passage of this act, be and the same hereby is legalized and made valid, and given the same force and effect as if proper notice had been given and such hearing had been held at the proper time. ('17 c. 457 § 1)

[7375—]3. **Same—Pending actions—**That nothing herein contained shall be construed to apply to any action or proceeding in which the validity of such decree is involved. ('17 c. 457 § 2)

[7376—]1. **Court may decree conveyance, when—**When any person under contract, in writing, to convey any real estate, dies or becomes insane, or incompetent before making the conveyance, the probate court may direct the representative or guardian, or the guardian of any minor who may take the vendor's interest in such real estate or any part thereof by descent or devise from such decedent, to convey such real estate to the person entitled thereto in all cases where such decedent, if living, or such ward, if sane or competent, might be compelled to convey. (Amended '15 c. 223 § 1)

### ACCOUNTING—DISTRIBUTION—FINAL SETTLEMENT

#### 7383. Account to be rendered, when—

An administrator, receiving money belonging to an estate, must account therefor, though he could not have collected it in a suit at law, there being no asserted adverse claim thereto (126-321, 148+282). Executors and Administrators, Ⓒ465.

#### 7390. Proceedings on hearing—

The probate court has no jurisdiction to determine a controversy between a devisee and one who claims to have succeeded to his rights in the estate, and the district court on appeal has no greater jurisdiction (161+392). Courts, Ⓒ202(5).

A surety on an administrator's bond may be heard in the probate court on an application to correct or set aside the final settlement, and hence the settlement cannot be attacked by the surety in an action on the bond on the ground that the probate court was mistaken in the facts on which its order was based or on the ground that the order was erroneous as a matter of law (126-445, 148+302). Executors and Administrators, Ⓒ509(3).

#### 7391. Assignment of residue and record thereof—

A decree of distribution of a testate estate necessarily construes the will, and unless made subject to the will, or unless ambiguous or uncertain on its face, the will may not be resorted to for the purpose of modifying or affecting the decree; but where the decree unequivocally assigns the whole estate to one person, it is not rendered uncertain by a recital that the distribution is in accordance with the terms of the will (132-316, 156+349). Executors and Administrators, Ⓒ315(5, 6).

#### 7393. Opening decree of distribution made without notice—

A decree of distribution, though erroneous, is binding and conclusive, and can be set aside by a court of equity only for fraud or mistake of fact (132-176, 156+285). Executors and Administrators, Ⓒ315(4, 6); Judgment, Ⓒ435.

The probate court has no power to amend its decree after the time for appeal has expired, unless in case of fraud, mistake, or surprise (132-176, 156+285). Executors and Administrators, Ⓒ315(3).

#### 7400. Discharge of representative—

An administrator cannot obtain an order in the probate court discharging him and his sureties until it appears that he has faithfully and fully administered his trust (123-165, 143+255). Executors and Administrators, Ⓒ537(6).

A complaint by heirs against an administrator to recover the value of land lost by defendant's failure to pay taxes thereon held demurrable, where it showed an unassailable discharge of the administrator by the probate court (128-3, 150+171). Executors and Administrators, Ⓒ443(1).

[7403—]1. **Distribution of certain small estates—**Whenever any person dies leaving real or personal property within this state and all of the property and assets of said deceased are exempt from the payment of debts, and do not exceed in value six hundred and fifty dollars, any person entitled to apply for letters of administration or for the allowance of a will to probate may petition the probate court of the proper county that the will, if the deceased died testate, be admitted to probate, or if intestate for letters of administra-

tion, and in any event that the whole estate be closed forthwith and distribution thereof made. ('17 c. 289 § 1)

See §§ [7295—]1 to [7295—]5.

[7403—]2. **Same—Petition**—Such petition shall in addition to the jurisdictional facts contain a description of all the property of said deceased, both real and personal, itemizing the same together with the facts by reason of which the same is claimed to be exempt, and the names and addresses so far as known, of the creditors, and shall pray the judgment of the probate court for a distribution of said property forthwith. ('17 c. 289 § 2)

[7403—]3. **Same—Citation**—The court shall thereupon issue its citation for a hearing thereon and cause the same to be published in the manner prescribed by law. Said citation shall contain a general description of all the property of said deceased and a true copy of said citation shall be mailed to each of the heirs and to each of the creditors of said deceased so far as the same can be ascertained, at least fourteen days prior to the date of hearing. ('17 c. 289 § 3)

[7403—]4. **Same—Decree of distribution**—If upon the date set for the hearing it shall appear to the probate court that all of the property left by said deceased is exempt, the probate court may in case there be a will admit the same to probate, and may order an order and decree distributing said property to the heirs or legatees and devisees of said deceased, and such further order providing for the payment of the expenses of administration as may be necessary in the premises. ('17 c. 289 § 4)

ADVANCEMENTS

7404. **What are, how treated—**

The doctrine of advancements, as regulated by this section, applies to intestate estates only (125-115, 145+785). Wills, Ⓒ758.

PARTITION

7412. **Guardians and agents—Notice—**

After an action on an executor's bond is commenced, an order of the probate court, vacating its order granting leave to bring such action, is not effective (125-368, 147+246). Executors and Administrators, Ⓒ537(2).

PROBATE BONDS

7416. **Bonds, when required, conditions—**

The special or sale bond required by § 7354 is additional or cumulative security, and not a substitute for the general bond provided for by this section (135-346, 160+859). Guardian and Ward, Ⓒ92.

The sureties on an administrator's bond executed under this section are liable for an act of the principal in converting the proceeds of the settlement of an action for wrongful death of the intestate given by § 8175 (123-165, 143+255). Executors and Administrators, Ⓒ528(1).

A surety on an administrator's bond is concluded by a judgment settling the accounts of an administrator, in the absence of fraud or collusion, and such settlement is not open to collateral attack in an action on the bond (126-445, 148+302). Executors and Administrators, Ⓒ535.

Failure of an administratrix to pay over to her successor an amount found due from her by an order of the probate court settling her account was a breach of her bond, unless the settlement may be impeached in an action on the bond (126-445, 148+302). Executors and Administrators, Ⓒ532.

Failure to pay an established claim constituted a breach of the executor's bond, and the decree allowing the claim was conclusive as against the surety, and the fact that the claimant applied for an order of the probate court regarding payment of the claim does not affect his right to recover on the bond (125-368, 147+246). Executors and Administrators, Ⓒ531, 532, 537(1).

7420. **Guardians and sureties discharged, when—**

135-346, 160+859; note under § 7354.

7421. **Bonds, run to whom—How approved and prosecuted—**

Cited (162+1054).

## GUARDIANS AND WARDS

**7425. Appointment of guardians**—Whenever it appears necessary or convenient, the probate court may appoint a guardian for either the person or estate, or both, of any minor who has no guardian appointed by will, and who is a resident of the county, or who resides without the state and has property within the county; provided, however, that notice shall first be given in such manner as the court may direct to the parents of such minor, if living, and if no parent is living, or if the whereabouts of both parents is unknown, then to the next of kin or custodian of the person of such minor; and provided further that no appointment by the probate court of a guardian of the person of a child under the age of eighteen shall be effective, if, at the time of making the same, proceedings involving the care and custody of such child are pending in a district court in this state, acting as a juvenile court. (Amended '17 c. 236 § 1)

**7431. When marriage of female ward terminates guardianship**—The marriage of a female ward under guardianship as a minor shall terminate such guardianship; provided that this section shall not apply to any person under guardianship on account of delinquency by order of a juvenile court. (Amended '17 c. 235 § 1)

**7433. Guardian for insane or incompetent persons—**

The son of an incompetent held, under the circumstances, the proper person to receive the appointment as guardian (128-324, 151+130). Insane Persons, ↪34.

A finding that the person for whom a guardian was asked was incompetent held sustained by the evidence (124-492, 145+378). Insane Persons, ↪2.

There was no abuse of discretion in selecting as guardians persons other than those suggested by the incompetent (124-492, 145+378). Insane Persons, ↪34.

It is not necessary, in order to confer jurisdiction, that the petition state that it is made by the county board or by relatives or friends of the incompetent. If the requisite facts exist, any defect in the petition is waived, if not taken advantage of on the trial (124-492, 145+378). Insane Persons, ↪33(1).

**7435. Hearing—Appointment—**

The statute relating to the cross-examination of the adverse party (§ 8377) has no reference to this proceeding. The proceeding is not adversary, and the method of determining the facts rests in the sound discretion of the court, controlled in a general way by the rules of ordinary judicial procedure. Evidence held to support findings of trial court (128-324, 151+130). Insane Persons, ↪2, 33(1).

A judgment in proceedings for the appointment of a guardian of an incompetent is admissible in evidence, but is not conclusive in a collateral litigation to prove the mental condition of the person at the time the judgment is rendered, or at any past time during which the judgment finds the person incompetent (124-27, 144+412, Ann. Cas. 1915B, 1006). Wills, ↪53(3).

**7441. Bond and oath—**

135-346, 160+859; note under § 7354.

Laches in bringing action on bond (123-13, 142+882, 47 L. R. A. [N. S.] 451). Guardian and Ward, ↪182(3).

**7442. Guardians of minors—General powers—**

135-346, 160+859; note under § 7354.

Cited on question of right of custody of children as between father and mother (see 161+525).

Father, supporting family, may sue alone for loss of services of child (129-190, 151+976, L. R. A. 1915D, 1111, Ann. Cas. 1916E, 897). Parent and Child, ↪7(6).

The welfare of a child five years old held to be best subserved by consigning it to the custody of its grandparents, rather than to that of its father, the mother being dead (127-387, 149+664). Habeas Corpus, ↪85(1).

**7446. Guardian to collect debts, etc., and appear in actions**—Every guardian shall settle all accounts of his ward, demand, sue for, and receive all debts, claims and causes of action due to or in favor of said ward, or, with the approval of the court, he may compound or compromise for the same and execute proper discharge and satisfaction thereof. He shall appear for and represent his ward in all legal proceedings, unless another person is appointed for that purpose. (Amended '17 c. 425 § 1)

This section was also amended by 1915 c. 110.

The proper mode of entitling an action by a guardian is "B., an Incompetent Person, by R., Her Guardian," and not "R., as Guardian, etc., Plaintiff" (123-360, 143+973). Guardian and Ward, ↪130.

An improvident and fraudulent settlement of a guardian of his ward's cause of action, though approved by the court, may be set aside, though the defendant was not shown to have participated in the fraud (126-194, 148+45): Guardian and Ward, Ⓒ63.

**7447. Management of estate of ward—**

Laches in suing guardian for accounting (123-13, 142+882, 47 L. R. A. [N. S.] 451). Guardian and Ward, Ⓒ182(3).

A guardian of an insane person is authorized, without first obtaining the approval of the probate court, to employ an attendant to care for the invalid wife of the ward, and where such employment is necessary, and is made in good faith, without unnecessarily burdening the ward's estate, the reasonable value of the services rendered is a valid claim against the estate of the ward after his decease (135-94, 160+187, L. R. A. 1917B, 676). Insane Persons, Ⓒ65.

**7451. Same—Hearing—Order—**At the time and place fixed for the hearing, witnesses shall be sworn before testifying and the certificate of such superintendent shall be admissible in evidence on his signature alone; and if, after full investigation and hearing, the judge of probate shall find that such child is entitled to the aid herein provided, and that the allegations of the petition are true, he may make an order directing such guardian to furnish aid to such child for such time, and in such an amount, as the judge of probate shall deem necessary.

The aid so furnished shall be allowed in the guardian's annual or final accounts as a part of his lawful disbursements. (Amended '15 c. 245 § 1)

**7452. Debts of ward, how paid—**

Where an insane person dies before a claim for services rendered to decedent's invalid wife under employment by the guardian has been paid, and an administrator of decedent's estate is appointed by the same court in which the estate of the insane person is being administered, the claim may be presented to the administrator, without being first presented in the guardianship proceedings (135-94, 160+187, L. R. A. 1917B, 676). Insane Persons, Ⓒ62.

**7453, 7454. [Repealed.]**

See § [7453—]1.

[7453—]1. **Laws repealed—**That Chapter 470, General Laws, Minnesota, for 1913, same being Sections 7453 and 7454, General Statutes Minnesota 1913 be and the same hereby is repealed. ('15 c. 342 § 1)

### COMMITMENT OF INSANE PERSONS

**7464-7489. [Repealed.]**

See § [7489—]20.

**7465—**The probate court has no jurisdiction to inquire into the mental condition of a person not actually within the territorial limits of the county, whether a legal resident of the county or not (135-99, 160+198). Insane Persons, Ⓒ8.

**7472—**The probate court has no jurisdiction to inquire into the mental condition of a person not actually within the territorial limits of the county, whether a legal resident of the county or not (135-99, 160+198). Insane Persons, Ⓒ8.

**7477—**Testamentary capacity as affected by adjudication of insanity (see 130-92, 153+131). Wills, Ⓒ52(4).

**7481—**The probate court has no jurisdiction to inquire into the mental condition of a person not actually within the territorial limits of the county, whether a resident of the county or not (135-99, 160+198). Insane Persons, Ⓒ8.

### [COMMITMENT OF FEEBLE MINDED, INEBRIATE AND INSANE PERSONS]

[7489—]1. **Terms defined—**The word "defective" as used in this act shall include the feeble-minded, the inebriate and the insane. The term "feeble-minded persons" in this act means any person, minor or adult, other than an insane person, who is so mentally defective as to be incapable of managing himself and his affairs, and to require supervision, control and care for his own or the public welfare. The term "inebriate" as used in this act means any person incapable of managing himself or his affairs by reason of the habitual and excessive use of intoxicating liquors, drugs or other narcotics. The term "insane" as used in this act means any person of unsound mind other than one who may be properly described as only an inebriate or feeble-minded person. ('17 c. 344 § 1)

By § 21 the act takes effect July 1, 1917.

[7489—]2. **Same—Voluntary admission of defective to state institution—Power of board of control—**Any person who is defective and who desires to receive treatment at a state institution may voluntarily make application to the state board of control for admission thereto, in such form and manner as may be prescribed by the board, and the board may thereupon grant to such applicant admission to the appropriate state institution. ('17 c. 344 § 2)

[7489—]3. **Same—Detention and examination of voluntary patients—**The superintendent of any state institution for defectives is authorized and empowered to detain any person admitted upon his own application as though he had been committed in the manner hereinafter provided, unless otherwise discharged by order of court. If any such person demands his release from such institution, the superintendent thereof shall, if he deems such release unsafe, within three days thereafter file a verified petition with the judge of probate of the county in which the institution is located, praying for the commitment of such defective as hereinafter provided. ('17 c. 344 § 3)

[7489—]4. **Petition for examination of defective—Warrant—**When any person residing in this state shall be supposed to be defective any relative, guardian or reputable citizen of the county in which such supposed defective person resides or is found may file a verified petition in the probate court of the county, setting forth the name and residence of the supposed defective person and the facts necessary to bring such person within the purview of this act. Whereupon the probate judge shall, after investigation, if the petition be sufficient, direct that the alleged defective person be brought before him, and when necessary the court may issue a warrant directed to the sheriff or any constable of the county, or to any person named therein, requiring him to bring such defective person before the court for examination. ('17 c. 344 § 4)

[7489—]5. **Same—County attorney to appear—**Whenever a judge of probate orders an examination he shall notify the county attorney of the time and place of said examination, who shall appear on behalf of the person to be examined and take such action as may be necessary to protect his rights. The court may, and on request of the county attorney, shall issue subpoenas for witnesses. ('17 c. 344 § 5)

[7489—]6. **Same—Board of examiners, how appointed—Feeble-minded person—Notice to board of control—**When such person is produced in court the probate judge shall designate two licensed physicians resident in the state who, with the probate judge, shall constitute a board to examine such person and determine as to his defectiveness. Where the proceeding is for the adjudication of feeble-mindedness the probate judge shall notify the state board of control of the filing of the petition and that a hearing will be had thereon not less than ten days thereafter, whereupon the board may, at its discretion, designate some person skilled in mental diagnosis to attend the hearing, examine the alleged defective and advise the board of examiners. Provided that if the alleged defective person is obviously feeble-minded or an inebriate the probate judge may dispense with the appointment of any board of examiners, with the consent of the county attorney, and may himself hear and determine the matter. ('17 c. 344 § 6)

[7489—]7. **Same—Examination and report—**The board of examiners shall hear all proper testimony offered by any person interested and the court may cause witnesses to be subpoenaed. When the examination is completed, the board shall determine whether or not the person examined is a feeble-minded person, an inebriate or an insane person and shall file in the court a report of their proceedings, including the findings, upon such forms as the state board of control may authorize and adopt. ('17 c. 344 § 7)

[7489—]8. **Same—Commitment of feeble-minded person—Discharge—**If the person examined is found to be feeble-minded, the court shall order him committed to the care and custody of the state board of control, as guardian of his person. Thereafter the board shall have power whenever advisable to place him in an appropriate institution. If, at any time, after study and ob-

servation in such institution, the superintendent is of the opinion that a person so committed is not defective, or that his further residence therein is not required for his own or the public welfare, he shall so report to the state board of control and the board may thereupon discharge such person from its further care and custody.

Provided, that any parent, guardian, relative or friend of a person committed as aforesaid may at any time file a petition for a hearing in the probate court which committed such person, to establish that the further guardianship of the board of control is not required for his own or the public welfare. If such contention is sustained, the probate judge shall order the discharge of such person from guardianship. ('17 c. 344 § 8)

[7489—]9. **Same—Commitment of inebriate or insane person**—If the person examined is found to be an inebriate or insane the judge shall issue duplicate warrants committing him to the custody of the superintendent of the proper state hospital or to the superintendent or keeper of any private licensed institution for the care of inebriates or insane persons. ('17 c. 344 § 9)

[7489—]10. **Same—Execution of warrant**—A copy of such warrant shall be delivered to the sheriff of the county who together with such attendants as shall be designated by the judge of probate, shall deliver the warrant and the patient to the superintendent of the institution designated in such warrant. ('17 c. 344 § 10)

[7489—]11. **Same—Temporary detention**—The probate judge, with the approval of the county board, may provide a place of temporary detention for defectives and make the necessary contracts therefor. Provided that this shall not authorize the construction of a hospital for that purpose. All expense necessarily incurred for such temporary detention of defectives shall be paid by the county. ('17 c. 344 § 11)

[7489—]12. **Same—Parole—Bond**—Upon request of the relatives or friends of any person alleged or found to be insane, or inebriate, they may be permitted to take charge of such person; but in such case the probate judge, or, if such person has been committed to the hospital, the superintendent thereof, may require a bond from such relatives or friends, running to the state, to be approved by the judge or superintendent, as the case may be, conditioned upon the care and safe keeping of such person; provided that no person charged with or convicted of a crime shall be so discharged. ('17 c. 344 § 12)

[7489—]13. **Same—Certificate of discharge or transfer**—Whenever any defective committed to a hospital under this act shall be discharged, or transferred to another institution, the superintendent, upon the day of such discharge or transfer, shall mail to the probate judge of the county from which such person was committed, a certificate stating the fact of such discharge or transfer and the date thereof and the date of commitment, which certificate shall be filed in said court. ('17 c. 344 § 13)

[7489—]14. **Same—Fees—How audited and paid**—The judge of probate shall allow and order paid the following fees for services provided for in this act: to each witness the sum of one dollar per day and actual disbursement for travel and board. To each examiner the sum of five dollars, and fifteen cents per mile for every mile traveled. To the person to whom the warrant of arrest is issued the sum of three dollars per day and actual disbursements and necessary board and lodging of himself and alleged defective while making the arrest. To the person, other than a nurse or hospital attendant, authorized to convey the defective to the place of commitment the sum of three dollars per day and all necessary disbursements for travel and for the support of himself, the alleged defective and authorized assistants. Such amounts shall be audited by the judge of probate and judgment entered of record therefor and shall be paid by the county treasurer upon the written order of the judge of probate and filed with the county auditor who shall issue his warrant on the county treasurer in payment of said sums, and upon pay-

ment thereof said judgment shall be satisfied of record by the judge of probate. The examiner designated by the board of control shall be paid by the state. ('17 c. 344 § 14)

[7489—]15. **Same—Examination and commitment, when resident of another county**—Whenever the alleged defective is found to have his legal residence in some other county he may nevertheless be examined and if found to be defective committed in like manner as persons residing in the county. The necessary costs and expenses of such examination and commitment shall be certified by such court to the auditor of the county in which the examination is held, who shall certify the same to the county auditor where the said alleged defective is found to be a legal resident and shall be paid as other claims against such county. ('17 c. 344 § 15)

[7489—]16. **Same—Proceedings when residence is questioned**—Whenever the auditor of the county to which costs and expenses have been certified denies that such person has a legal residence in his county, he shall send such certificate with a statement of his claim in reference thereto to the state board of control who shall immediately investigate and determine the question of residence and certify its findings to the auditor of each of said counties. Such decision shall be final unless an appeal is taken therefrom within thirty days after its filing. Such appeal may be to the district court of the county from which such person was committed. ('17 c. 344 § 16)

[7489—]17. **Same—Court commissioner to act, when**—Whenever the judge of probate is unable to act upon any petition concerning an alleged defective the court commissioner shall perform all his duties in such case and the authority herein granted to the judge of probate shall be exercised by said court commissioner. ('17 c. 344 § 17)

[7489—]18. **Same—Forms of blanks**—For the purpose of securing uniformity in the practice of examination and commitment of defectives, the state board of control is hereby authorized and empowered to prescribe forms of blanks which shall be used. ('17 c. 344 § 18)

[7489—]19. **Same—False petition, etc.—Penalty**—Whoever for a corrupt consideration or advantage, or through malice shall make or join in or advise the making of any false petition or report aforesaid, or shall knowingly or wilfully make any false representation for the purpose of causing such petition or report to be made shall be deemed guilty of a felony and punished by imprisonment in the state prison for not more than one year or by a fine of not more than five hundred dollars. ('17 c. 344 § 19)

[7489—]20. **Same—Laws repealed**—Sections 4111 to 4126 inclusive, and sections 7464 to 7489 inclusive, General Statutes, 1913, are hereby repealed. ('17 c. 344 § 20)

[7489—]21. **Persons committed to asylum or hospital for insane—Duties of clerk of probate court and superintendent**—Subdivision (1). Whenever after August 1st, 1917, any probate court of this state shall have committed any person to the superintendent of a state asylum, detention hospital or hospital for the insane, and one of the duplicate warrants issued pursuant thereto shall have been returned, with the superintendent's indorsement thereon that the person named therein has been received by him, and filed in such probate court, the clerk of such probate court, or the judge, if there is no clerk, shall make and file with the state board of control, a copy of such warrant and of the indorsements thereon together with such other information as is provided for in this act.

Subdivision (2). Whenever after August 1st, 1917, any person shall be received into any state detention hospital on his own application or pursuant to a determination that such person is mentally disturbed, and in need of treatment therein, under the provisions of chapter 224, Laws 1909 [4083-4090], the superintendent so receiving him shall forthwith mail to the state board of control a written statement setting forth the names of the person so received, the nature, amount and location of any money or other property owned by such person, the time when received, the name and address, if

known, of the relative or guardian, if any, on whose application the determination was made, together with such other information as is provided for in this act.

Subdivision (3). On or before the 3rd day of August, 1917, the superintendent of each asylum, detention hospital or hospital for the insane shall file with the state board of control, a statement in writing of the names of the inmates of their respective institutions committed thereto, also the names of all persons who have been received into any detention hospital without a warrant of commitment and who were inmates thereof on August 1st, 1917. Such statement shall also contain the date of commitment or reception of the inmate, his residence, any information which the superintendent may have as to any money or property which may be owned by such inmate, and the nature, amount and location thereof; the name and address of the guardian of such inmate, if known, also the names and addresses, so far as known, of the relatives of such inmate who are or may be, under the provisions of this act, liable to contribute to the support of such inmate. ('17 c. 294 § 1)

By § 11 the act takes effect August 1, 1917.

[7489—]22. **Same—Duties of superintendent on death, parole, discharge, etc., of patient**—Whenever any person who has been committed to or received into any asylum, detention hospital or hospital for the insane, dies, or is required to leave, or is paroled, or discharged therefrom, it shall be the duty of the superintendent of the institution to at once report in writing such fact and the time of the occurrence thereof to the state board of control.

It shall also be the duty of the superintendent to forthwith report to the state board of control the time when any paroled inmate was returned to his actual custody, either because of the revocation of his parole or the expiration of the period for which he was paroled. ('17 c. 294 § 2)

[7489—]23. **Same—Judge of probate and county attorney to inquire into property of person committed, and of relatives**—It shall be the duty of the judge of probate and county attorney, of the respective counties in this state, upon and in connection with the proceeding and examination of any person petitioned to be committed to a state hospital to fully inquire into the property and estate of such person and the property and estate of the persons upon whom liability is imposed for his care under the provisions of this act, and, in case of commitment of such person, to report such information forthwith to the state board of control upon such blanks or forms of report as it may provide therefor. Such reports shall be accompanied by the recommendation of such officers to the board of control as to what extent the estates or relatives of the persons so committed should be charged with liability under the provisions of this act. ('17 c. 294 § 3)

[7489—]24. **Same—Claim of state for reimbursement—Power of board of control**—For the purpose of defraying the expenses and cost of maintenance of any inmate in a state asylum, detention hospital or hospital for the insane, the state of Minnesota shall have a valid claim for reimbursement to the extent of \$10.00 per month for each such inmate, for all moneys paid and expenses incurred by the state for such maintenance,—first, against the property or estate of such person so maintained, second, against the relatives of such person in the following order, to-wit: spouse, children and parents provided, that if the state board of control shall determine that the property or estate of any such insane person is not sufficient to more than care for and maintain the wife and minor children of such inmate, or that the means and property of the classes of persons herein secondly charged with the liability and cost of the maintenance of such insane person in said institutions, is not more than sufficient to properly provide for themselves and those otherwise dependent upon them, the said board of control shall relieve the estate of such insane person and the relatives of such insane person from a portion or all of such charge or liability as they in their judgment and upon investigation may deem just and proper. In case of increase or decrease in the estate of such insane person, or in the estates of those persons herein secondarily liable for the cost of the maintenance of an insane person in such institutions,

or in case of the death of such persons, or either of them, the board of control is hereby authorized to modify or cancel its previous order made in relation thereto, and from time to time make such other and further order with reference thereto as it may seem just and proper.

In all cases under the provision of this act, the property which under the laws of this state, is exempt from attachment, or sale on any final process, issued from any court, shall be exempt also as to the estates and persons charged with or upon whom any liability is imposed under the provisions of this act. ('17 c. 294 § 4)

[7489—]25. **Same—Determination of board of control conclusive—**In any action brought as hereinafter provided to enforce any liability created by this act or to collect from the property or estate of any inmate or relative as herein provided, the determination of the state board of control as to the sufficiency of the property or estate of the inmate to properly care for and maintain the wife and children, if any, or either or any of such classes of persons upon whom liability is imposed under the provisions of this act, shall be conclusive unless appealed from as herein provided. ('17 c. 294 § 5)

[7489—]26. **Same—Failure of insane person to pay—Action against relatives—**When the state board of control shall have determined the liability of the estate or persons herein named to defray the cost of maintenance of an insane person and no appeal taken therefrom as herein provided and shall direct the persons herein charged with the expense and cost of maintenance of insane persons cared for in state institutions as herein provided to pay and demand payment for such maintenance and such persons shall refuse or neglect to make such payment for thirty days after receiving such demand or notice, the state board of control in the name of the state of Minnesota may bring an action against any and all of said relatives and persons and the representative of such inmate and recover against them therefor, and the further sum of \$10.00 as costs of such action in addition to the disbursements in such action. ('17 c. 294 § 6)

[7489—]27. **Same—Cancellation or modification of order—**Any person who has been ordered to make payment for the support of an inmate in the institutions referred to in this act, the guardian or relative of any such insane person may petition the state board of control for the release from or modification of such order and said board after investigation may cancel or modify its former order if it shall find the conditions warranting such action. ('17 c. 294 § 7)

[7489—]28. **Same—Investigation and determination by board of control as to payments by relatives—Collection, how made and disposed of—Assistants—**The state board of control shall have the power to make investigation as to the property and estate of persons therein charged with liability for the cost and expense of maintenance of insane persons in state institutions and shall have the power to subpoena witnesses, take testimony under oath and examine any public records relating to the estate of an inmate or relative liable for his or her support. The state board of control shall determine whether such relative shall be required to pay for the support of such inmates or whether such charges shall be made against the estate of such an inmate. An order shall be issued to the persons who are determined liable for such payments requiring them to pay monthly, quarterly or otherwise as may be determined by said board. The board shall make all reasonable and proper efforts to collect such amounts, and in case of inability to collect, the attorney general, upon the recommendation of such board, shall direct the prosecuting attorney of the proper county to collect or institute civil action in the name of the state of Minnesota to recover the amount due with interest. All money received, as herein provided or by suit instituted, shall be paid to the state treasurer and placed in the general revenue fund and a separate account kept thereof. The board may, if it shall find it necessary, appoint one or more competent persons to act under its direction to assist in the carrying into effect the provisions of this act and the salaried and necessary expenses of such agents and other necessary expenses incident to carrying into effect

the provisions of this act, shall be paid upon the order of the state board of control out of the moneys received or collected under the provisions of this act. ('17 c. 294 § 8)

[7489—]29. **Same—Appeal to district court**—Any person or party feeling himself aggrieved by any order or determination of the state board of control under the provisions of this act may appeal therefrom to the district court of the county in which the person or party resides, but upon any such appeal where any order or determination of the board of control made under the provisions of this act be brought in question such order shall be prima facie evidence of the facts therein stated. Such appeal shall be taken within thirty days after service of notice of the filing of the order or determination of the board of control appealed from. Such appeal may be taken by serving a notice thereof upon the chairman of the said board of control or the secretary thereof and upon filing such notice, with proof of service thereof in the office of the clerk of the district court of the proper county within ten days after service thereof, the said court shall be deemed to have jurisdiction of said appeal and thereafter such proceedings shall be had as in other civil actions triable in said court. On such appeal the court shall have the power to order pleadings to be filed and make any other order necessary to the proper procedure and determination of said appeal. ('17 c. 294 § 9)

[7489—]30. **Same—Voluntary payments**—That whenever after August 1, 1917, any person who has committed himself or herself for treatment at any state detention hospital, or the relatives, friends, or legal representatives of any person who has been committed to a state asylum, detention hospital or hospital for the insane, desires to pay the whole or any portion of the cost of the maintenance of such person in any of said institutions, in addition to the requirements of this act, the same shall be received and disbursed as other money paid pursuant to the provisions of this act, and said board is hereby directed to establish a schedule of the cost to the state of the care and maintenance of the patients in such institutions. ('17 c. 294 § 10)

## APPEALS

### 7490. In what cases allowed—

Executors may appeal as parties "aggrieved" from an order of the district court quashing a writ of certiorari directed to the probate court to review its order directing that plaintiffs, as executors, pay respondents a certain sum out of the funds of the estate (133-124, 155+906). Appeal and Error, [↪151\(3\)](#).

The right of creditors, devisees, legatees, or heirs to appeal, under subd. 4 of this section from allowance or disallowance of a claim, is, by § 7491, subordinated to the general right of appeal given the representative of the estate, and it is only when he declines to appeal that the right extends to creditors, etc. (162+356). Executors and Administrators, [↪256\(3\)](#).

### 7491. Who entitled to appeal—

126-445, 148+302.

The notice from the probate judge provided for by § 7490 does not limit the right of appeal under this section; that limitation being effected by the notice mentioned in § 7492 (133-20, 157+709). Courts, [↪202\(5\)](#).

A party entitled to appear in the probate court and object to the probate of a will, but who does not so appear, may appeal to the district court from an order admitting the will to probate (129-248, 152+541). Wills, [↪359](#).

This section gives an appeal from the allowance or disallowance of a claim against decedent's estate, first, to representative or the interested creditor, and, if representative on request declines to appeal, extends right to creditors, heirs, etc., in general. That objectors to the allowance of a claim against a decedent's estate appeared in the probate court does not entitle them to appeal, where the representative has not declined to appeal (162+356). Executors and Administrators, [↪256\(3\)](#).

### 7492. Appeal, how and when taken—

A party aggrieved has six months from the date of the filing of a judgment within which to appeal, unless the adverse party has served him with a written notice of the decision, in which case the right of appeal expires thirty days after the service of such notice. The notice mentioned in this section, and not the one provided for by § 7233 or by § 7490, is the one limiting the time for appeal (133-20, 157+709). Courts, [↪202\(5\)](#).

The probate court cannot amend its decree after the time for appeal has expired, except in case of fraud, mistake, or surprise (132-176, 156+285). Executors and Administrators, [↪315\(3\)](#).

**7496. Proceedings in certain cases—Trial—**

On appeal to the district court from an order of the probate court allowing a will, there is no constitutional or statutory right to a trial by jury of the issues of testamentary capacity and undue influence (131-439, 155+392). Jury, [↪](#)17(3).

Whether there shall be a jury trial of the issues of testamentary capacity and undue influence on appeal from an order of the probate court probating a will rests in the discretion of the district court. On appeal from an order of the probate court admitting a will to probate, the issues of testamentary capacity and undue influence, having been submitted to a jury, may be withdrawn before decision by the jury and decided by the court, though the evidence is such that the court would not have been justified in directing a verdict (131-439, 155+392). Wills, [↪](#)379, 380.

Where the issues of mental capacity and undue influence were submitted to the jury, and the jury found for proponent on the issue as to mental capacity, and for contestant on the other issue, and proponent filed a motion for new trial, which was the only motion filed, the court properly granted a new trial on the issue of undue influence alone (122-463, 142+729). Wills, [↪](#)337.

**7497. When judgment affirmed—When reversed—**

On appeal under this section the jurisdiction of the appellate court is limited to those matters of which the probate court had jurisdiction (161+392). Courts, [↪](#)202(5).

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## CHAPTER 75

### COURTS OF JUSTICES OF THE PEACE

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#### COMMENCEMENT OF ACTIONS

**7521. Failure to appear—Offer of judgment—**If either party fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall dismiss the action, or proceed to hear the evidence of the party present, and render judgment thereon: provided that in an action upon contract for the payment of money only if the plaintiff shall, at the time of the issuance of the process, file with the justice a verified complaint and shall attach a copy thereof to the process and shall cause a copy of such complaint to be served upon the defendant in the manner prescribed by law for the service of the process in such action, if the defendant fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall enter judgment against the defendant on such complaint without requiring proof of the cause of action therein pleaded: provided, further, that a defendant who has appeared may, before answering the complaint, offer to allow judgment to be taken against him for the sum or property in said offer, specified, with costs. If the offer is accepted, the justice shall thereupon enter judgment accordingly. If refused, the same is to be deemed withdrawn, and cannot be given in evidence; and, if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs made subsequent to such offer, but must pay the defendant's costs and disbursements made and expended subsequently thereto. (Amended '17 c. 309 § 1)

#### PLEADINGS AND TRIAL

**7522. Time to plead—Adjournment on return day—**

Where parties appear on the return day, and on plaintiff's application hearing is adjourned for one week, answer may be filed on the day to which hearing is adjourned. An answer cannot be filed more than one week after return day without consent (124-147, 144+449). Justices of the Peace, [↪](#)92.

Where defendant filed an answer after discontinuance caused by adjournment for more than one week, he waived objection to jurisdiction, though the answer was a nullity because not filed within the time allowed by law (124-147, 144+449). Justices of the Peace, [↪](#)60.

**7530. Pleadings verified—**

An unverified answer in justice court is a nullity, so far as regards admission of proof thereunder against proper objection; but such an answer is an appearance (124-147, 144+449). Justices of the Peace, [↪](#)84(1), 97.